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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The Supreme Court of the United States

Robert Greene, Petitioner

v.

Douglas David, et al Respondent

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Second Circuit

---

PETITION FOR WRIT OF CERTIORARI

Robert Greene Pro se
4111 State Route 9
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71pp

QUESTIONS PRESENTED FOR REVIEW

Does a public official have the authority, without probable cause, to order a person to leave their property at a time when it is exposed to many people?

Does a combination of non-illegal acts, when put together, then constitute an illegal act?

Can probable cause be based upon false information concerning events that never happened?

Can summary judgement be granted when there are genuine issues as to material facts and without probable cause?

Petitioner was ordered to leave his property until the next morning, is that a reasonable act?

Did the District Court and the Circuit Court violate their own rules and regulations?

Defendants:

Appearing for Douglas David, Warren County Sheriff Department and Warren County Board of Supervisors

Mario Cometti of Ryan and Smalacombe
102 Hackett Boulevard, Albany, NY 12209
Tel. No. 518-449-5501

Appearing for Brian Engle and Warrensburg Volunteer Fire Company.

Christopher Dressler of Maynard, O'Connor, Smith and Catalinotto, 80 State Street, Albany, NY 12207
Tel. No. 518 465 3553

Appearing for Town of Warrensburg (New York)

John S. Hall, Jr. Post Office Box 440
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PETITION FOR WRIT OF CERTIORARI

Petitioner preys for a Writ of Certiorari to be issued to review the decisions of The United States Court of Appeals for the Second Circuit and The District Court for Northern New York that have been entered in this case: (a) to decide the Civil Rights of people to Protect Their Property, (b) to decide in some fashion the magnitude of events that would trigger probable cause against the property owner, (c) to exercise this Court's supervisory power in regards to the lower Courts.

JURISDICTION

The jurisdiction of this Court was invoked pursuant to 28 USC par. 1254 (1). The decision was filed on October 29, 1999. The jurisdiction of the United States Court of Appeals for the Second Circuit was invoked pursuant to 28 USC 1291. The jurisdiction of the District Court for Northern NY was invoked pursuant to28 USC par.1331, 1343 (3) and (4), 2201 and 42 USC 1983.

STATEMENT OF THE CASE

This case is a result of actions and events that happened during a house fire on January 8, 1994, where petitioner was the owner and resident. At about one hour after the fire began, petitioner was ordered to "leave the property" by Warren County Deputy Sheriff, Douglas David, later arrested and taken away in handcuffs. (See App-18)

The order to "leave the property" shortly followed the petitioner's asking the firemen to put their water into a location where the fire was burning, indicated by a noticeable amount of black smoke coming from a spot that was under a collapsed floor acting like a roof. Their water was being placed on top of this collapsed floor and not underneath a side of the collapsed floor where the water being squirted could easily reach the burn.

Petitioner first commented to a firemen that was putting water on this collapsed floor and into a small pile of rubble that was ahead of the rising black smoke. Petitioner said to the effect "there is a cement wall in the way". That fireman made no change in their attack with the water. At that time the attic part of the house was gone, half of the main floor had collapsed into the cellar and there was almost no visible flames showing from the remains.

Petitioner then spoke to several firemen perhaps thirty feet away from the first fireman. These firemen had white helmets that were labeled "chief" and or "assistant chief ". They refused to change the location of attack on the underneath fire to a more favorable location, citing near by propane tanks.

With the refusal, petitioner immediately walked away and was about thirty feet away, walking away from the house

when petitioner heard from behind "You have to leave". Turning around, seeing the sheriff's uniform for the first time at the fire scene petitioner responded "This is my property". Several similar comments the deputy added "or you will be arrested". With no further comments petitioner continued walking away from the house out the driveway to the motel the other side of route 9.

The arrest occurred, perhaps a half an hour later, part way down the driveway leading to the house at about one hundred fifty feet away from the house. The driveway and the main road is in the shape of a "Z", that is leaving the main road at about a 45 degree angle, going two hundred feet down a hill of over twenty feet drop in elevation to almost a "U" turn then about two hundred almost level to the house, and continuing with out the "U" turn to another house.

Petitioner had stopped about fifty feet short of the "U" turn where there was an operating fire engine that was unable to make the sharp turn due to the fair sized snow banks. Petitioner had walked down the driveway with a neighbor, Anthony Sapienza, not talking to anybody else, not being yelled at, not being stopped or confronted by anybody. At a point about fifty feet from this sharp almost "U" turn where there was a fire engine both of us stopped and looked at the remains of the house for a short time perhaps twenty to thirty seconds.

At that time, petitioner, upon haring a noise behind him, turned and saw Warren County Deputy Sheriff (in uniform), Douglas David, charging towards him. Petitioner sidestepped and he went past. Petitioner was then arrested, wrestled to the ground, hand cuffed and taken to the sheriff's substation for booking. Later the appearance ticket was Adjourned on Contemplation of Dismissal (ACOD) which was ultimately dismissed.

Petitioner upon being returned to the scene of the fire, shortly went to the motel room and stayed there until the 2 AM flare up.

To quote a decision: Under New York law, and, a fortiori, under federal law, terminating a criminal proceeding after adjournment in contemplation of dismissal is in all respects favorable to the defendant. - Singleton v City of New York, 632 F.2d 185 pg 197 (1980). Also: The strong public policy in favor of providing a remedy for those whose federal constitutional and statutory rights have been deprived by individuals acting lawlessly under color of state law is a powerful one. \if the federal courts serve any great purpose, it is in protecting these rights. The Supreme Court has reminded us that civil rights legislation is to be broadly construed. - Singleton v City of New York, 632 F.2d 185 pg 205.

FALSE INFORMATION

The District Court has erred in relying heavily upon false information supplied to it by the defendants.

This false information is presented in the appendix. The page numbers and paragraph numbers will be given.

Affidavit of Brian Engle pages 28 - 30.
Affidavit of Douglas David 30 - 35.
Affidavit of Robert McNally 35 - 40.

Items of false information are:

Drag fire fighters away by pulling on them or their hoses. 28-8, 30-7, 35-15

insisting the fire had to be fought in this fashion and we had to do as he requested. 28-8, 30-7, 31-7, 32-11, 32-12, 37-20.

on three or four occasions told to stand back, would do so only to inch back and repeat behavior. 28-9, 31-7, 32-12, 32-13, 35-15, 35-19 and 38-22.

Told not to go near area because of danger of electrocution. 28-10, 31-8, 32-11 and 36-17.

Plaintiff stayed away for a short period but then began interfering again. 29-12.

Mrs. Greene remained at the scene with out any problems. 29-13 and 39-28.

Mr. Greene returned remained at the scene but no longer interfering. 29-13 and 34-17.

I and other firemen left the scene around 11PM with the Greene's still at the premises. 29-14

Greenes present 30-15 and 30-16.

Grabbed a hose from firefighters. 30-7 to 8, 31-9, 35-15 and 37-20

tapping on firemen's shoulders. 31-9, 35-15 and 37-20.

Repeatedly told not to go into house. 31-8, 32-11 and 36-11.

Running around building in close proximaty to the fire. 31-9 and 37-20

Plaintiff does remember leaving the property alone. 33-14

Called to plaintiff to stop 33-16 and 39-25

Turned and looked then began running towards house 34-16

continued to fight while trying to get to house 34-16 and 39-25

running down the driveway 38-24, 38-25 and 39-25

had to stay away from the scene 39-28

Plaintiff is certain the property is missing 40-29

Jean Hadden counters the false information:

Running 41-4 and 45-6

Close to building 41-4 and 45-6

Confrontations with others 41-4

Leaving the scene by way of driveway after briefly and orderly talking to a group of firemen and then the deputy sheriff. 41-6

Not conversing with others 42-6 (top)

Pulling hose away 42-7, 45-7 and 45-9

Pulling on firefighters 45-9

Anthony Sapienza counters the false information:

Walked down driveway 43-4 and 44-11

Not being accosted or stopped 43-5 and 44-11

Briefly stopping, suddenly and without warning wrestled to the ground 43-6

In the appendix pages 51 and 52 there is also an itemized list of the direct paragraphs of affidavits of false information and the affidavits of the witnesses.

CREDITABLY ELIMINATED

With all of this false information being presented by the defense it eliminates their creditably.

Petitioner admits to:

Straightening a kink in a fire hose that was greatly restricting the water going through it. App-48 par 25 and App-9 mid page.

Petitioner admits to asking firemen to direct water under a collapsed floor acting like a roof. App-26 to 29 and mid page App-9. Par 28 is a different event.

Walking around the house at 30 to 50 feet away from the building. App-49 par 31

Walking near low power lines within 3 - 4 feet but not closer or touching them. App-47 par 17 thru 24

Retrieving two pieces of electrical equipment from just inside of the cellar doors that vehicles had been driven through. App 46 par 6 thru 10. Please note the App-47 par 11 thru 14 from the informational affidavit of Timothy N. Taylor App-50 section 4 and App-51 section 5.

However, please note in particular App-51 (C), "Salvage as much as possible, by removing from the building using

air packs until high heat or structural collapse is eminent or covering items with salvage covers [tarps] if that area is deemed to be salvageable".

In New York there is no distributed material of any kind, that petitioner is aware of, regarding official state procedures or recommendations in regards to fires in homes. Many large buildings do have posted evacuation routes that may or may not help dependant upon the fire. News media comments have been repeatedly "to get out of the building then watch".

In the first few minutes of a fire there is a good possibility that some possessions can be saved. Since our house fire was a television news cast showing a building burning, in the Albany, New York area, with firemen and other people carrying out belongings very rapidly from the end of the house that was not burning. This indicates that salvaging belongings from a burning building in New York is not illegal. Admittedly safety of those people involved is of utmost concern and accidents do occur.

Please note the description in App. Pg. 46 par. 6-14, 16. To quote par. 10 "At that time there was no smoke or heat in the cellar and only a small amount of fire at the mid house stairway." So this amounted to being similar to walking about twenty feet from a campfire. In addition there were no posted barrier tapes, see App. Pg. 47 par. 15 and Pg. 50 par. 3 (C).

To any one who reads this petition, I present a thought for them to consider. Admittedly most all people do not want a house fire but would you rather have the New York procedure of get out, stand and watch or the New Hampshire way of salvage valuables when with in the realm of adequate safety.

Petitioner became informed of this noticeably different procedure of firefighting a year or so after our house fire. I know which procedure I would much rather have followed. Just remember, it could happen to you!

PROBABLE CAUSE

A common definition is, "probably cause exists whenever a police officer has a reasonable suspicion that a crime has been committed."

Therefore in considering this case:

1. Is it a crime, for in a few seconds to help the firemen by moving a fire hose to straighten a kink thereby allowing a full flow of water to pass through the hose?

2. Is it a crime, to calmly ask firemen to put water underneath a collapsed floor that is acting like a roof and preventing the water from reaching the burn?

3. Is it a crime, to walk around a house at a safe distance when no barrier tapes are deployed on the area?

4. Is it a crime, to walk near suspected energized electric wires that have dropped to chest height when petitioner has had over fifty years experience handling live and in use electric wiring and high voltages of 30,000 volts that occur in color television sets? Also please note - that to actually touch these wires would not be any more dangerous than handling a cord of an appliance while it is plugged into an electrical socket.

5. Is it a crime, to retrieve property from a burning building? Such was shown on local news casts. Petitioner can venture a guess that everybody on this earth would want

to save everything from a burning home or building.

6. In addition, does putting all of these episodes into one event then become a crime?

These above questions are somehow answered affirmative by the Circuit Court, See App pg. 2 and I quote:

"As the District Court noted, Greene was not entitled to recover in this action if the temporary eviction and arrest were supported by probable cause. The acts that Greene admitted he performed sufficed to establish the existence of probable cause to believe to believe that he was intentionally and unreasonably obstructing the efforts of the firefighters in extinguishing the fire, see N. Y. Penal Law Par. 195.15 (McKinney 1999). The question of whether Greene performed certain other acts, which he disputed, was thus not material, and hence his submission of evidence to support those disputes could not defeat summary judgement"

If these above numbered items do not contain a criminal act then can probable cause be based upon false information that is fabricated from events that never happened?

CIRCUIT COURT HAS ERRED

With negative answers to the above question and the previous five numbered questions the Circuit Court has erred.

With a positive answer to any one of these questions then who has drastically changed the penal laws of New York State without telling anybody else?

This is another reason that petitioner is requesting that the Supreme Court exercise its supervisory powers over the lower courts.

SUMMARY JUDGEMENT

Petitioner has presented evidence that there is no probable cause.

"Summary judgement will not lie if the dispute about a material fact is 'genuine', that is if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v Liberty Lobby Inc. 91 L Ed 2d 208

Petitioner will present material facts of genuine issue. They are:

1. Petitioner was ordered to leave his property with out probable cause. Property disappeared by acts of unknown subjects.

2. Petitioner was arrested and told to not return until the next morning, which is much longer than the time needed to extinguish the fire. Is that reasonable? It is also a public embarrassment.

3. Petitioner by not being present to effect a guarding action did loose items of property. Half of the cellar did not get completely destroyed where they were. See App-40

Therefore : Is the moving party entitled to a judgement as a matter of law when their defense is based upon false information?

Information that has been presented should cause a jury to render a verdict in petitioner's favor. If I was a jury member and presented with this same information, there is no doubt in my mind which way I would render a verdict. I also consider any unbiased and impartial jury members would yeild a similar verdict.

This adheres to the Federal Rules of Civil Procedure 56 (c) "Summary Judgement shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to a judgement as a matter of law. App-11.

PRO SE

Petitioner as pro se knows a few of the Court's terms and procedures. The Court by its own instructions is to proceed in the way most favorable to the petitioner.

REASON FOR GRANTING THE WRIT

This case has an important question concerning the civil rights of the people of the United States.

CONCLUSION

The defendants have presented the Court with a "blizzard" of false information of events that "never happened" in a way to achieve "Probable Cause". Petition has presented numerous items of this blizzard that eliminates the creditability of the defendants pleadings.

While this case involves events of one house fire, there can easily be over one hundred thousand house fires in this nation per year. Common events that may occur show the need for the Court's guidance. Should this Petition for Writ of Certiorari b denied then the Court is ruling that even very minor events can be a "Probable Cause" for ejection from their property or arrest of the property owner in an increasing of police powers towards a police state such that the police have virtually unlimited powers to do almost anything.

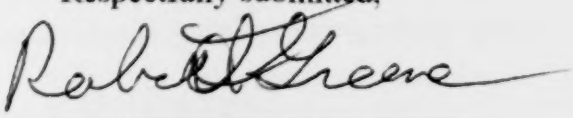
Warren County Deputy Sheriff, Douglas David acting in his official capacity as deputy sheriff and acting under the color of State law ordered petitioner to leave his property and later, in the same capacity, arrested petitioner.

Should this be an unpublished decision, petitioner will strive to have the decision and its results widely published.

RELIEF SOUGHT

Wherefore, petitioner respectfully preys that this court will issue a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,



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ALNY \ NDNY
UNITED STATES COURT OF APPEALS 97-cv-14
FOR THE SECOND CIRCUIT Kahn
Homer

SUMMARY ORDER

99-7527

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

Oct. 29, 1999 Foley Square, New York City

Circuit Judges: Amalya Kearse, Rodger Miner and Jose Cabranes

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Robert Greene Plaintiff- Appellant

V

Douglas David et al Defendant- Appellees

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the record from the United States Court for the Northern District of New York, and was argued by plaintiff pro se, submitted by council for defendant Town, and argued by counsel for the remaining defendants.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgement of said

District Court dismissing the complaint and the order denying reconsideration be and they hereby are affirmed.

Plaintiff Robert Greene appeals from a judgement of the United States District Court for the Northern District of New York, Lawrence E. Kahn, Judge, dismissing his complaint brought under 42 U.S.C. Par. 1983 against various defendants in connection with his temporary eviction from his property and his subsequent arrest during the attempt by the defendant firefighters to fight a fire at his house. On appeal, Greene contends that the District Court improperly granted summary judgment despite the existence of genuine issues of material fact, and that the court should have granted Greene's motion reconsideration. We disagree, and we affirm substantially for the reasons stated in Judge Kahn's Memorandum-Decision and Order dated January 21, 1999, and his Memorandum-Decision and Order dated April 7, 1999.

As the district court noted, Greene was not entitled to recover in this action if the temporary eviction and arrest were supported by probable cause. The acts that Greene admitted he performed sufficed to establish the existence of probable cause to believe to believe that he was intentionally and unreasonably obstructing the efforts of the firefighters in extinguishing the fire, see N.Y. Penal Law Par. 195.15 (McKinney 1999). The question of whether Greene performed certain other acts, which he disputed, was thus not material, and hence his submission of evidence to support those disputes could not defeat summary judgement. See generally Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Knight v U.S. Fire Insurance Co., 804 F. 2d 9, 10-11 (2d Cir. 1986), cert. denied, 480 U.S. 932 (1987). We see no abuse of discretion in the court's denial of plaintiff's

motion for reconsideration. The evidence submitted in support of that motion could not properly be characterized as "new" and, in any event, it did not warrant any change in the court's prior conclusion.

We have considered all of the plaintiff's contentions on this appeal and have found them to be with out merit. The judgment and order of the district court are affirmed.

FOR THE COURT:
KAREN GREVE MILTON,
Acting clerk
By:

/ s / Lucille Carr

App 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK 97-CV-14

ROBERT GREENE Plaintiff

V

DOUGLAS DAVID Defendants,

LEK/DRH
Filed Apr. 8
1999

LAWRENCE E. KAHN, District Judge

MEMORANDUM-DECISION AND ORDER

By Memorandum-Decision and Order filed January 22, 1999, this Court granted summary judgement to the remaining defendants and dismissed the action in its entirety. Final judgement was entered the same day. Presently before the Court is Plaintiff's motion for reconsideration of the January 22, 1999 decision. Generally "if a party fails to bring a motion for reconsideration pursuant to a specific federal rule, such motion will be construed as a motion under Rule 59(e), which permits a district court, upon motion and within its discretion, to alter or amend a judgement provided such motion is filed within ten days of the entry of judgment' Demaio v Mitchell, No. 93-CV-1229, 1998 WL 9226, *1 (N.D.N.Y. Jan. 7, 1998). The ten day period is calculated exclusive of weekends and holidays pursuant to Fed. R. Civ P. 6. (foot note 1) In this case, excluding weekends , Plaintiff's motion was filed nine days after the entry of judgement, and will therefore be reviewed pursuant to Rule 59 (e). (foot note 2)

---

foot note 1 - After January 1, 1999, Local rule 7.1 (g) specifies that the time for reconsideration motions is ten "calendar" days. Although this can be construed to include

Ft nt contd 1 - weekends, the Court declines to interpret it in such a fashion in order to avoid creating a conflict between the Local Rules and the governing Federal Rules of Civil Procedure. See United States v. White, 980 F. 2d 836, 844 (2d Cir. 1992) ("a construction of a local rule that creates a conflict with a federal rule should be avoided.")

Ft nt 2 – The Court wishes to clarify that the chief distinction between a Rule 59(e) motion and a Rule 60 (b) motion, for purposes of this action, is that the filing of a Rule 59 (e) motion tolls the period in which the movant may file a notice of appeal until a decision on the reconsideration motion is rendered.

I. Discussion

Reconsideration of a prior decision is discretionary and the factors that generally compel reconsideration are "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Virgin Atlantic Airways Ltd. V National Mediation Bd., 956 F. 2d 1245, 1255 (2d Cir.), cert. denied, 506 U.S. 820 (1992). It is well-settled that Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a " second bite of the apple" Sequa Corp. v GBJ Corp., 156 F. 3d 136, 144 (2d Cir. 1998). The motion for reconsideration "is an extraordinary remedy which should be used sparingly," 11 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d Par. 2810.1 (West 1995). Moreover, the decision of whether to grant a motion for reconsideration lies within the sound discretion of the district court. See Doolittle v. Ruffo, 1996 WL 167662, at *2 (N.D.N.Y. April 1, 1996).

Plaintiff does not allege that there has been an intervening change in controlling law. Thus, he must rely on newly

discovered evidence or demonstrate a clear error in the Court's decision. Newly discovered evidence must have become available only after judgment with the exercise of due diligence. See Atlantic States Legal Found., Inc. v Karg Bros., Inc., 841 F. Supp. 51, 55-56 (N.D.N.Y. 1993). Plaintiff does offer certain evidence, including his own affidavit, a video tape allegedly showing some of the events at issue, and an amended affidavit from Timothy Taylor. Two other affidavits, by Anthony Sapienza and Jean Hadden, which Plaintiff submitted roughly a month after Plaintiff filed his reconsideration motion, are referenced in his supporting affidavit.

Very little, if any of this, can be considered to be "newly discovered." Plaintiff's own affidavit, discussing himself and his personal recollection of the disputed events, and the affidavit of Timothy Taylor, which is substantially the same as was previously submitted, clearly do not qualify. Similarly, Sapienza and Hadden had previously submitted affidavits, which were considered by the Court prior to its January 22, 1998 decision. After reviewing the videotape, and assuming that it could not have been produced at an earlier time, the Court finds nothing in it that would justify reversing the Court's prior Order.

Finally, The Court finds nothing in Plaintiff's memorandum or the supporting documents which demonstrates that this Court made a clear error in its decision.

Accordingly it is hereby

Ordered that Plaintiff's motion for reconsideration is DENIED and it is further

Ordered that the Clerk serve a copy of this order on all parties by regular mail.

IT IS SO ORDERED.

/ s / LAWRENCE E. KAHN
United States District Judge

Dated: 4/7, 1999 Albany, New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT GREENE
Plaintiff
V

Douglas David et al
Defendants

JUDGEMENT IN A CIVIL CASE
Docket No. 97-cv-14 LEK/DRH
Filed January 22, 1999

XX Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion to dismiss brought by Defendants David, Warren County Sheriff's Department and Warren County Board of Supervisors is GRANTED and the action is therefore DISMISSED in its entirety, all in accordance with the Memorandum-Decision and Order of the Hon. Lawrence E. Kahn, U.S. District Judge dated January 22, 1999.

Signed: William J. Griffin Deputy Clerk.

Decided on the submissions by:

Robert Greene pro se plaintiff.

For defendants: Douglas David, Warren County Sheriff's Department and Warren County Board of Supervisors – Robert P. McNally

Brian Engle and Warrensburg Volunteer Fire Co. – Stephen C. Prundente

District Judge – Lawrence E. Kahn

Memorandum – Decision and Order

In this action brought pursuant to 42 U.S.C. Par. 1983, Plaintiff alleges that his constitutional (and or civil rights) were violated by the defendants when he was ordered to leave his property and subsequently arrested during the attempt by the Defendant Warrensburg Volunteer Fire ("Fire Company") to fight a fire occurring in his house. By Memorandum – Decision and Order filed on January 5, 1998, this Court granted the motion to dismiss brought by Defendants Brian Engle and the Fire Company, and similarly granted the motion to dismiss brought by Defendant Town Board, Town of Warrensburg. Presently before the Court is a motion for summary judgement pursuant to Fed. R. Civ. P. 12(c) . For the reasons discussed below, summary judgement is granted to all remaining defendants.

I. Facts

Resolving factual disputes in favor of the Plaintiff, the facts are as follows. On January 8, 1994, a fire started in a propane clothes dryer. After his efforts to put out the fire were unsuccessful, Plaintiff's wife called the Warrensburg Fire Department. Brian Engle ("Engle"), Chief of the Warrensburg Fire Department, dispatched his firefighters to the scene, who arrived at the plaintiff's house shortly after

receiving the call. When Engle himself arrived, he determined that the fire had spread throughout the house and called on fire departments from the neighboring Towns of Chester and Horicon for assistance.

While firefighting efforts were ongoing, Plaintiff entered the house through the cellar door to retrieve electrical equipment. Plaintiff dep. At 28. At that time there was a "slight bit of fire" at the stairway. Id. (Plaintiff's note- this was over twenty feet away and no smoke in the air). At some later point, Plaintiff walked around the house to an area where electric wires were hanging at about chest level. An employee of the power company shouted at Plaintiff to stay away from the wires , but Plaintiff "ignored him". Plaintiff Dep. At 38-39. (Plaintiff's note-'but I did not touch them or go more than [less] a few feet from them Dep. at 40). Plaintiff also straightened out a kink in a fire hose. Finally Plaintiff spoke with several firefighters, telling them that they should redirect the water to a different location.

Defendant Douglas David ("David") a Warren County Deputy Sheriff, received a dispatch while on patrol alerting him of the fire. When he arrived at the scene, Engle approached him and stated that Engle Was having a problem with the Plaintiff. Engle related a number of way in which Plaintiff had allegedly interfered with the efforts of the firefighters:

[Briar said that] the plaintiff kept repeatedly trying to drag the firefighters away by pulling on them or their hoses. He would tap on their shoulders or grab their arms in an attempt to have them direct water into the basement through the cellar doors. Mr. Greene kept interrupting the firefighters by insisting that they direct water from their hoses into a basement rather than through a window at the northwest corner of the building. Chief Engle explained further that

Plaintiff had grabbed one of the hoses from the firefighters.

Brian Engle further informed [Divid] that on three or four occasions, he had told Mr. Greene to stand back to let them work. On each occasion, [Engle said,] plaintiff was told that he could stay but he simply had to get further back behind the men and stop interfering with them. Plaintiff would do so only to return and repeat the same behavior over and over.

On another occasion, Brian Engle explained that plaintiff had to be physically prevented from entering the basement door where plaintiff was trying [to get] into the house to remove electrical equipment. The firefighters had again repeatedly told him that he was not to go back into the house. Moreover, Brian Engle explained that there was electrical wires that had burned through and were lying exposed on the ground all around the basement door and house. . . . Brian Engle told [David] that he was frustrated with his efforts to stop plaintiff from going near the fire and posing danger to himself and his other officers. He asked me to keep him back so that the firefighters could do their job. (Plaintiff's note – all most all of this last page and one quarter is fabricated and never happened)

David Aff. Par 7-8 (and more) (foot note 1). Although David did not personally see most of the alleged events, David did observe the Plaintiff attempting to get the firefighters to direct their firefighting efforts at another location. He also observed Plaintiff moving around the building in close proximity to the fire and near a number of downed electric wires.

FT NT 1- The truth of many of Engle's allegations is sharply disputed by the Plaintiff, and on a defendants motion for summary judgement, the Court cannot rely on a defendants version of disputed events. However, the statements by Engle are cited here and will be relied upon later only for the fact that the statements were made, which is not disputed.

David then approached the Plaintiff and told him "You've got to leave". Plaintiff Dep. at 48. Plaintiff stated "This is my property. Id. At 51. David repeated several times that Plaintiff had to leave, finally stating, "If you don't leave, I'll arrest you right on the spot." Id. At this point Plaintiff left. However, after cleaning and drying his boots at a nearby hotel (motel), Plaintiff returned about a half hour later, accompanied by a friend, Anthony Sapienza (Sapienza). They walked partly down the driveway and then stood talking. David approached, forced Plaintiff to the ground and handcuffed him. Plaintiff was then taken to the police station and charged with obstructing fire fighters in violation of N.Y. Penal Law par. 195.15 (McKinney 1988). Plaintiff was issued an appearance ticket charging him with the offense; however, the appearance date was ultimately adjourned in contemplation of dismissal. It is not clear whether the charge was ultimately dismissed.

II. Discussion

A. Standard of review

> Under Rule 56 (c) , summary judgement:
> shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law.

Fed. R. Civ. P. 56 (c); see Anderson v Liberty Lobby, 477 U.S. 242, 250 (1986). The moving party has the initial burden of "informing the district court of the basis for its motion" and identifying the mater that "it believes demonstrate [s] the absence of a genuine issue of material fact." Celotex Corp. v Catrett, 477 U.S. 317, 323 (1986); Fed. Deposit Ins. Corp. v Giammettei, 34 F. 3d 51, 54 (2d Cir. 1994.) The substantive law determines which facts are

material to the outcome of a particular litigation. See Anderson, 477 U.S. at 250; Heyman v Commerce & Indus. Ins. Co. 524 F. 2d 1317, 1320 (2d Cir. 1975). In determining whether summary judgement is appropriate, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. See Matsushita Elec. Indus. Co. v Zenith Radio Corp., 475 U.S. 574 586 (1986) (citing United States v Diebold, Inc., 369 U.S. 654, 655 (1962); Hurwitz v Sher, 982 F. 2d 778, 780 (2d Cir. 1992).

If the moving party meets its burden, the burden then shifts to the non-moving party to come forward with "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56 (e). The non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at586; Trans Sport v Starter Sportswear, 964 F. 2d 186, 188 (2d Cir 1992) (stating that "the nonmoving party must come forward with enough evidence to support a jury verdict in its favor, and the motion will not be defeated merely . . . on the basis of conjecture or surmise') (citations omitted). Only when it is apparent, however, that no rational finder of fact "could find in favor of the non-moving party because the evidence to support its case is so slight" should summary judgement be granted. Gallo v Prudential Residential Servs. 22 F. 3d 1219, 1223 (2d Cir. 1994).

B Claim against David

Plaintiff alleges that David violated his constitutional rights because he acted without any reason to order Plaintiff off his property. Implicitly Plaintiff also alleges that he was arrested without probable cause. David argues that he had probable cause to arrest Plaintiff. The Court finds that the constitutionality of both the arrest and the ejection order depend on whether there was probable cause to believe that

Plaintiff had violated the law against obstructing firefighters. Because the Court finds that probable cause existed, David's motion for summary judgment must be granted.

1. Arrest.

To the extent that Plaintiff claims that he was arrested without cause, he alleges an action for false arrest in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution. However the existence of probable cause to arrest is a complete defense to such an action. In general, "probable cause to arrest exists when the officers have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed a crime Id.

Plaintiff was arrested for allegedly violating N.Y. Penal Law par. 195.15 (McKinney 1988). This provision states

A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any

1. fireman in extinguishing a fire, or prevents or dissuades another from extinguishing or helping a fire; or
2. fireman, police officer or peace officer in performing his duties in circumstances involving an imminent danger created by an explosion, threat of explosion or the presence of toxic fumes or gases.

N.Y. Penal Law par. 195.15. The accompanying commentary notes that the law does not require that the obstruction be accomplished "by means of intimidation, physical force or interference, or by means of any independently unlawful act." Id. (Practice Commentary) (internal quotations omitted).

Based upon the undisputed actions of the Plaintiff which David observed, including his movement around the house and among the electrical wires and his interactions with the firefighters, and based on Engle's statement which David had no reason to doubt, the Court finds that David has probable cause to believe that Plaintiff was guilty of obstructing the efforts of firefighters. Hence, summary judgement is granted to David on the claims against him to the extent that they allege false arrest.

2. Eviction Order

David's order directing Plaintiff to leave his own property also implicates the protections under the Fourth Amendment. The Fourth Amendment protects against "unreasonable searches and seizures" by the government. U.S. Const. amend. IV. A "seizure [of property] occurs when ' there is some meaningful interference with an individual's possessory interests in that property.' " Soldal v Cook County, Illinois, 506 U.S. 56, 60 (1992) (quoting United States v Jacobsen, 466 U.S. 109 (1984). The Court has no trouble concluding that a forced ejection from property, even for a brief period, constitutes such an interference and thus a seizure of property.

However, whether the Fourth Amendment is violated depends upon whether the seizure was "reasonable." See. e.g., Soidal, 506 U.S. at 61-62. Though the test of reasonableness "is not capable of precise definition or mechanical application, "Bell v Wolfish, 441 U.S. 520, 558 (1979), it generally requires a "careful balancing of government and private interests." Soldal, 506 U.S. at 71 (quotations omitted); United States v James Daniel Good Real Property, 510 U.S. 43, 66 (1993).

Where there is probable cause to believe that a party is

violating the law against obstructing the efforts of firefighters, the Court finds that a person's interests in remaining on their property is outweighed by the interest in enforcing the law and the interest, which the law embodies, in enabling firefighters to perform their difficult and dangerous task without interference. It is undisputed that in this case, the seizure was limited to a temporary expulsion for the period of the firefighting efforts, and because the Court has found that probable cause existed to conclude that Plaintiff was obstructing the efforts of firefighters, the Court concludes that the seizure was not unreasonable. Accordingly, Plaintiff's claims, insofar as they rest on a seizure of property, must also be dismissed.

C. Claims Against The Warren County Sheriff' Department and the Warren County Board of Supervisors

Plaintiff has also has brought suit against defendant Warren County Sheriff's Department ("Sheriff's Department") and the Warren County Board of Supervisors ("Board"). In order to establish the liability of a municipal entity under par. 1983, a plaintiff must show that a constitutional violation resulted from a municipal custom or policy. Gottlieb v County of Orange, 84 F. 3d 511, 518 (2d Cir. 1996). Here assuming without deciding that David's acts were the result of a municipal policy, they do not amount to a constitutional violation. Hence the claims against the municipal defendants must also be dismissed.

Accordingly, it is hereby

ORDERED that the motion to dismiss brought by Defendants David, Warren County Sheriff's Department and Warren County Board of Supervisors is GRANTED and the action is therefore DISMISSED in its entirety; and it is further

ORDERED that the Clerk serve a copy of this order on all parties by regular mail.

IT IS SO ORDERED.

/s/ LAWRENCE E. KAHN
United States District Judge

Dated: 1/21,1999
Albany, New York

UNITED STATES DISTRICT COURT 97-CV-0014
NORTHERN DISTRICT OF NEW YORK LEK/DRH

ROBERT GREENE Plaintiff
V
DOUGLAS DAVID et al Defendants

APPEARANCES: Jan 5, 1998

Robert Greene Pro Se
Plaintiff

For Defendants: Robert P. McNally
Douglas David, Kathleen B. Hogan
Warren County Sheriff' Dept.
Warren County Board of Supervisors

Brian Engle Stephen C. Prudente
Warrensburg Volunteer Fire Co.

Town Board John S. Hall
Town of Warrensburg

Brendan F. Baynes was listed but distributed a letter that
They were not involved with this case and remove their name

District Judge Lawrence E. Kahn

MEMORANDUM-DECISION AND ORDER

Presently before the Court are a motion to dismiss pursuant to Fed. R. Civ. P. Rule 12 (b) (6) or Rule 12 (c) from defendants Brian Engle ("Engle") and Warrensburg Volunteer Fire Company ("Warrensburg Fire Company") and a motion to dismiss pursuant to Fed. R. Civ. Rule 12 (b) (6)

from defendant Town Board, Town of Warrensburg ("Warrensburg Town Board"). For reasons discussed below both motions are granted.

1. Background

The following facts are taken from plaintiff's complaint and assumed for the purposes of this decision to be accurate. On January 8, 1994, a fire began at plaintiff's home, and shortly thereafter, a fire truck from the Warrensburg Fire Company arrived. A five-minute delay occurred between the time the hose was extended to the time the water began to pour. Plaintiff asserts that the fire department made several mistakes in where and how they applied the water, and asserts that substantial fire damage to the house may have been a result of these mistakes.

At some point in the process, plaintiff took a more active role, instructing the firefighters as to which direction they should apply the water. (Plaintiff's note - could only ASK as had no authority to instruct or command.) Shortly thereafter, plaintiff was told to leave the site by Deputy Sheriff Douglas David ("David") of the Warren County Sheriff's Department ("Sheriff's Dep't."). Plaintiff refused to leave, claiming a right to remain on his property. David repeated his demand several times, and plaintiff refused to comply. At no time did David give an explanation for his order.

However, plaintiff did then leave the property in order to remove the water from his boots, returning about half an hour later. At this time, he was confronted by David, who, with the help of other unnamed parties, wrestled plaintiff to the ground and placed him in handcuffs. Plaintiff's complaint alleges that Brian Engle, as chief of the fire department, would have been in charge at the site, and that "[i]t is quite possible that . . . Brian Engle gave instructions to Deputy

Sheriff David." Compl. Par. 71. Plaintiff was taken to the police station and charged with interfering with firemen under N.Y. Penal Law Par 195.15 (McKinney 1988). Foot note 1 --- Section 195.15, entitled "Obstructing firefighting operations," states:

A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any: 1. Fireman in extinguishing a fire, or prevents or dissuades another from extinguishing or helping to extinguishing a fire, or 2. Fireman, police officer or peace officer in performing his duties in circumstances involving an imminent danger created by an explosion, threat of explosion or the presence of toxic fumes or gasses.
Obstructing firefighting operations is a class A misdemeanor.

N.Y. Penal Law Par. 195.15 (McKinney 1988). The accompanying commentary notes that the law does not require that the obstruction be accomplished "by means of intimidation, physical force or interference, or by means of any independently unlawful Act." Id.(Practice Commentary) (internal quotations omitted).

(contd) Months later, plaintiff received an Adjournment in Contemplation of Dismissal [ACOD] on the interference charge.

Plaintiff also alleges that there had long been rumors that "items disappeared at fires," Compl. Par. 74, apparently meaning that the Warrensburg Fire Company, in the course of performing its duties, also engaged in theft. (Plaintiff's note - When the fire co. leaves then any body in the area can loot what is remaining) Plaintiff asserts that these rumors were the reason why he attempted to remain on the property. Plaintiff also alleges that his inability to protect his property has indeed resulted in items "disappearing in areas where [t]otal distruction did not occur." Compl. (Third Cause of

Action). Particular missing items are referred to in plaintiff's papers submitted in reply to the current motions to dismiss.

Plaintiff has stated three causes of action. The first and second are brought against David for ordering plaintiff to leave his property. The third, which does not name a specific party, refers to the disappearance of certain items due to his inability to protect his property. Plaintiff demands both injunctive relief, being an order requiring the police to be informed as to the propriety of forcibly removing persons from their property while said is burning, and monetary relief in the amount of $2,000,000.

II. Discussion

A. Standard of Review

Because the parties have answered the complaint prior to filing their motion to dismiss, the motion is reviewed as a motion for judgement on the pleadings pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure. The standard of review is the same for motions brought under Rule 12 (c) as for motions to dismiss under Rule 12 (b) (6). See Sheppard v Beerman, 18 F.3d 147, 150 (2d Cir.), cert. denied, 513 U.S. 816 (1994).

On a motion to dismiss, the general rule is that the allegations in a plaintiff's complaint are deemed to be true and must be liberally construed in the light most favorable to the plaintiff. Dahlberg v Becker, 748 F. 2d 85, 88 (2d Cir. 1984), cert. denied, 470 U.S. 1084 (1985).

The Court notes with emphasis its obligation to afford plaintiff every favorable inference arising from his pro se status, as well as from his position as non-movant in this motion to dismiss. To be sure, because pro-se plaintiffs are often unfamiliar with the formalities of pleading

Requirements, "The Supreme Court has instructed the district courts to construe pro se complaints liberally and to apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel. Platsky v CIA, 953 F. 2d 26, 28 (2d Cir. 1991). However, the plaintiff must still "assert a cognizable claim and allege facts that if true, would support such a claim." Boddie v Schneider, 105 F. 3d 857, 860 (2d Cir. 1997). The Court must dismiss for failure to state a claim if it appears beyond doubt that the plaintiff cannot in any way establish a set of facts to sustain his claim which would permit relief. Hughes v Rowe, 449 U.S. 5, 10 (1980); Bass v Jackson, 790 F. 2d 260,262 (2d Cir. 1986).

B. Plaintiff's par. 1983 Claim

1. General Principles

Because the motions currently before the Court concern only Brian Engle, the Warrensburg Fire Company, and the Warrensburg Town Board, the Court will consider the sufficiency of the complaint only with regard to these parties.

In order to state a claim under 42 U.S.C. par 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of a right, privilege, or immunity secured by the United States Constitution or the laws or treaties of the United States. A par 1983 action "creates no substantive rights; it merely provides remedies for deprivations of rights established elsewhere." Oklahoma City v Tuttle, 471 U.S. 808, 816, reh. Denied, 473 U.S. 925 (1985).

2. Brian Engle

Even construing the facts liberally, there is no basis for

Finding that Engle has deprived plaintiff of a protected constitutional right. Plaintiff's claim against Engle might be interpreted to allege a deprivation of his property rights without due process based on the failure Engle's fire-fighters to prevent damage to plaintiff's house. However, any negligence in Engle's supervision of the firefighters is not actionable as such a deprivation. See Daniels v Williams, 474 U.S. 327, 328 (1986) (Fourteenth Amendment Due Process Clause not implicated by negligent act of an official causing unintended loss to property). Alternatively, if plaintiff's claim is interpreted to allege that Engle, as a "policy-maker," should be found liable for failure to adequately train the members of the Warrensburg Fire Company, plaintiff would have still have to demonstrate that such training resulted in a deprivation of plaintiff's rights by those Engle supervised, and as mentioned above , the negligence of the firefighters does not constitute a deprivation of rights. Id.

Nor do plaintiff's allegations, if understood as asserting that Engle was involved in the theft of plaintiff's property, support a deprivation of property without due process. Although theft is clearly a deprivation of property, plaintiff must also allege that the deprivation cannot be remedied under State law. See Parratt v Taylor, 451 U.S. 527, 543-44 (1981) (tort remedies provided post-deprivation satisfied requirement of due process), overruled on other grounds, Daniels v Williams, 474 U.S. 327 (1986); Capozzi v City Olean, New York, 910 F. Supp. 900, 909 (W.D.N.Y. 1995) (suitable post- deprivation remedy satisfies due process clause). A party which has suffered theft of property has a remedy under either the New York Penal or civil common law. See N.Y. Penal law par 155.05 (larceny defined); Employers' Fire Ins. Co. v Cotten 245 N.Y. 102 N.Y. 1927) (action for conversion available for unauthorized

assumption and exercise of the right of ownership over goods). Therefore, plaintiff's allegations, even understood as a claim that Engle has engaged in theft, do not support a claim for deprivation of property without due process.

Considering plaintiff's claim that "[i]t is quite possible that . ...Brian Engle gave instructions to Deputy Sheriff David," Comp par. 71, the Court finds that this entirely conjectural statement does not ordinarily provide the basis for an action. Granting plaintiff the leeway justified by his pro se status, the Court will consider the complaint as alleging, based on plaintiff's belief, that Engle did indeed, in some fashion, give instructions to David to have plaintiff ejected from the property. Assuming that Engle could be held liable for instructing an officer over whom he had no actual authority, see New York Town Law par. 176-a (describing the duties and powers of the chief of a district fire department), plaintiff's allegations still fail to allege a deprivation of his constitutional rights.

If plaintiff's allegations are interpreted as an action for unlawful arrest in violation of the Fourth and Fourteenth Amendments, plaintiff must show that he was arrested without probable cause. -Foot Note 2- See Postr. V Doherty, 944 F. 2d 91, 98 (2d Cir. 1991) (quoting United States v Hastamorir, 881 F. 2d 1551,1556 (11 Cir. 1989))(Where "the encounter is a full-scale arrest . . . The government must establish that the arrest is supported by probable cause.") The Court must take into account plaintiff's involvement in the activities of the firefighters and his attempt to give them instructions. However understandably the desire to preserve

Ft nt 2- The Fourth Amendment, made applicable to the States by the Fourteenth, see Ker v California, 374 U.S. 23, 30 (1963, provides in part that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." U. S. Constitution Amendment 4.

one's home might be, plaintiff's actions establish probable cause of a violation of a N.Y. Penal Law par. 195.15 (McKinney 1988) for obstructing firefighters. Therefore, plaintiff has not alleged facts that could establish unlawful arrest.

Plaintiff's claim that he was ordered from his home also implicates his Fourth Amendment right to be free of unreasonable searches and seizures. A seizure of property occurs when "' there is some meaningful interference with an individual's possessory interests in that property.'" Sodal v Cook County, Ill., 506 U.S. 56, 61 (1992) (quoting United States v Jacobsen, 466 U.S. 109, 113 (1984). "[A]t the very core of the Fourth Amendment stands the right of a man to retreat into his own home." Id. (citations and internal quotations omitted). Thus forced eviction from one's home raises an issue under the Fourth Amendment, even where a party's liberty and privacy interests have not been infringed. Id. At 62 - 63.

Whether the Fourth Amendment is actually violated, however, depends on whether the seizure was unreasonable. Id. At 62. Determination of "reasonableness" is "generally conducted on a case-by-case basis, with the Court weighing the asserted governmental interests against the particular invasion . . . ." Hudson v Palmer, 468 U.S. 517, 537 (1984) (J. O'Connor concurring). The seizure should last no longer than necessary to effectuate the government purpose. See Florida v Royer, 460 U.S. 491, 500 (1983).

Under the circumstances in this case, the Court concludes that defendants' actions were reasonable. Plaintiff's involvement in the Warrensburg Fire Company's attempt to put out the fire could reasonably be viewed as a violation of state law and have thus justified arrest, a much greater deprivation than temporary eviction from one's home It was

not unreasonable for the defendants' to attempt to end the interference in a manner short of arrest, particularly as such interference could not only inhibit successful extinguishment of the fire but also endanger various parties involved. The Court finds, therefore, that requiring plaintiff, after his attempt to direct the Warrensburg Fire Company in its firefighting activities, to leave his property for so long as their attempts continued, was not unreasonable.

Because plaintiff's allegations do not establish a violation of constitutional rights by Engle, the par. 1983 action against Engle must be dismissed.

3. Warrensburg Fire Company

For the Warrensburg Fire Company to be found liable, it must have either created a policy or custom under which an unconstitutional action occurred or allowed such a policy or custom to occur or to continue. See Williams v Smith, 781 F. 2d 319, 323-24 (2d Cir. 1986). As noted above, none of the actions taken by Engle were unconstitutional. Without an underlying unconstitutional action, there is no basis for finding a policy under which such an action occurred. The action against the Warrensburg Fire Company must be dismissed.

4. Warrensburg Town Board

Plaintiff's action against the Warrensburg Town Board is based on his allegation that "[t]he Warrensburg Town Board is the elected board of governmental members that has control over the Warrensburg Fire Company." Compl. Par 73.

Defendants argue that, pursuant to par. 174(7), a fire district is "a political subdivision of the state" and that "[i]he officers

and employees of a fire district, including the paid and volunteer members of the fire department thereof, are officers and employees of such fire district and are not officers or employees of any other political subdivision." N.Y. Town Law par. 174(7) (McKinney 1988). See also Greater Poughkeepsie Library District v Town of Poughkeepsie, 81 N.Y. 2d 574, 580 (N.Y. 1993) (fire districts "exercise their powers independent of the towns they serve"). However defendants have not alleged that the Warrensburg Fire Company is part of a fire district. Rather, they have only stated that it was created pursuant to N.Y. Town Law par. 170 (McKinney 1988), which allows for the creation of fire districts, fire alarm districts of fire protection districts. See Baker Aff. Par. 7; N.y. Town Law Par.170 (1) (McKinney 1988). Only a fire district is covered by par. 174 (7). See Nelson v Garcia, 548 N.Y.S. 2d 963, 965 N.Y. App. Div. 1989). It is not clear from the papers, therefore, that the Warrensburg Fire Company is independent of the Warrensburg Town Board.

Moreover, the Warrensburg Town Board's other defenses are not availing. The notice requirements of New York law are not applicable to par.1983 actions. See Felder v Casey, 487 U.S. 131 (1988); Hoger v Thomann, 592 N.Y.S. 2d 887, 888 (N.Y. App. Div. 1993). Moreover, qualified immunity applies only to individuals, not to municipalities. See

Nevertheless, by the same reasoning discussed in relation to the Warrensburg Fire Company, there is on basis for finding the Warrensburg Town Board liable under par. 1983. The action against them is therefore dismissed.

III. Conclusion

A review of the plaintiff's papers reveals the seriousness of his concern with regard to the constitutionality of defendants'

actions . However, the needs of the firefighters, who are performing difficult and potentially dangerous work on a volunteer basis, also deserve respect and serious consideration, and it is the reasonable determination of the state that in the midst of performing their duties, such persons must be left to their own judgment.

Accordingly, it is

ORDERED that the motion to dismiss by defendants BRIAN ENGLE and WARRENSBURG VOLUNTEER FIRE COMPANY is GRANTED; and it is further

ORDERED that the motion to dismiss by defendant TOWN BOARD, TOWN OF WARRENSBURG is GRANTED; and it is further

ORDERED that the Clerk serve a copy of this order on all parties by regular mail.

IT IS SO ORDERED.

DATED: January 5, 1997
Albany, New York

/s/ LAWRENCE E. KAHN
UNITED STATES
DISTRICT JUDGE

Plaintiff's note - typographical error date is 1998

The following are excerpts from affidavits where titles, signatures and undisputed parts are omitted.

Brian Engle, Chief, Warrensburg Volunteer Fire Co.
December, 20, 1997.

8. The plaintiff, however, repeatedly tried to drag the fire fighters away by pulling on them or their hoses. Mr. Greene kept interrupting them by insisting that the fire could be better fought in this fashion and that we had to do as he requested. As part of an earlier evaluation of how best to fight the fire, I had previously considered attacking the fire from this direction. We could not do so, however, because the roof had collapsed closing off the corridor into the basement from this door with debris.

9. Plaintiff's repeatedly bothering the firemen in this fashion interfered with their firefighting efforts. On three or four occasions, I told Mr. Greene (as did my men) to stand back to let the firefighters work. On each occasion, he was told that he could stay but that he simply had to get further behind the men and stop interfering with them. Plaintiff would do so only to inch back and repeat his behavior.

10. At some point, plaintiff had to be prevented from entering the basement doorway where plaintiff had been trying (despite repeated instructions that he was not to do so) to get inside the house. The electric wires were lying exposed and presumably live on the ground all around this basement door. Plaintiff had been told not to go near the area because of the danger of electrocution. Plaintiff unequivocally posed a danger both to himself and to the firefighters by his actions.

11. Because of the repeated interference of the plaintiff, I asked Warren County Deputy Sheriff, Douglas David to do something to keep plaintiff out of the way so that I

and my men concentrate on the fire.

12. Upon information and belief, Douglas David took aside and told him on several occasions, just as I had, that he had to keep back. After each warning, plaintiff stayed away for a short period but then began interfering again. Finally, Officer David asked plaintiff to come with him to a restaurant across the road for a cup of coffee with him. Plaintiff left with Officer David. I had no further involvement with plaintiff.

13. I did not witness the arrest. I have been told that plaintiff was arrested as he fled from Officer David. Plaintiff was taken away for processing and was gone about an hour to an hour and a half. During that time, Mrs. Greene remained at the scene without any problems. When Mr. Greene returned there was no repeat of his previous behavior. He too remained at the scene watching us fight the fire but no longer interfering.

14. The fire was finally put out at around 9-10PM. At about 10:00 or 10:30PM while the firefighters were securing and loading their equipment, Mrs. Greene asked if one of my men could enter one of the rooms in the concrete block portion of the house to retrieve money from beneath a water bed. I agreed and one of my officers accordingly entered a window, observed the remains of a water bed and within moments had located a "large stack" of waterlogged bills bound by rubber bands from beneath the waterbed exactly where Mrs. Greene had instructed them it would be found. The money was given to Mrs. Greene who thanked them. This was the only property which they were asked to recover. I and the other firemen left the scene at around 11 PM with the Greene's still at the premises.

15. The plaintiffs discovered and called the fire department

to the site in the middle of the night to put out a fire that had rekindled in the basement. They did so at about 2:00AM. There was another flare later that morning. At this time, one Robert Kelso of the fire department borrowed a front end loader from Warren County DPW to lift the roof remains thereby allowing the firefighters to shoot water beneath the roof fragments where the fire was still smoldering. This effectively put the fire out once and for all. On each occasion the Greenes were present and could, presumably, have taken whatever steps they deemed necessary to secure their property.

16. I have no idea what plaintiff is claiming for lost property. I know of no theft from the property or complaints that anybody was looting. Mrs. Greene was present the entire time of the fire; Mr. Greene was present within an hour or an hour and an half of his arrest and the Greenes were present thereafter to take what steps they felt necessary to protect their property. (end of affidavit)

Affidavit of Warren County Deputy Sheriff, Douglas David, January 14, 1998.

7. It was obvious to me that the structure was completely involved and, given the conditions and nature of the fire, that the firemen were having a difficult time putting the fire out. When I got closer to the fire Chief Brian Engle came up to me and advised that he was having a difficult time controlling the plaintiff. He explained that the plaintiff kept repeatedly trying to drag the firefighters away by pulling on them or their hoses. He would tap on their shoulders or grab their arms in an attempt to have them direct water into the basement through the cellar doors. Mr. Greene kept interrupting the fire fighters by insisting that they direct water from their hoses into a basement rather than through a window at the northwest corner of the building. Chief Engle explained further that plaintiff had grabbed one of the hoses

from the firefighters. Apparently, plaintiff believed that the fire could be better fought in this fashion and that the firefighters should do as he requested. Plaintiff repeatedly bothered the firemen in this fashion. Brian Engle further informed me that on three or four, he had told Mr. Greene to stand back and let them work. On each occasion, plaintiff was told that he could stay but he simply had to get farther back behind the men and stop interfering with them. Plaintiff would do so only to return and repeat the same behavior over and over.

8. On another occasion, Brian Engle explained that plaintiff had to be physically prevented from entering the basement door where plaintiff was trying and into the house to remove electrical equipment. The firefighters had again repeatedly told him that he was not to go back in to the house. Moreover, Brian Engle explained that there were electric wires that had burned through and were lying exposed on the ground all around the basement door and house. Plaintiff had been told not to go near the area because of the danger of electrocution. Brian Engle told me that he was frustrated with his efforts to stop plaintiff from going near the fire and posing danger to himself and his other officers. He asked me to take plaintiff aside and keep him back so firefighters could do their job.

9. Prior to Chief Engle making this request, I had actually watched plaintiff tapping on firemen's shoulders as they were directing water onto the fire in an apparent effort to convince them that they should direct their efforts elsewhere. I also observed Mr. Greene-visibly very agitated and upset with the loss or his home and equipment - running around the building several times in very close proximity to the fire, near various downed electric wires and between the firefighters and the fire itself. In fact, I actually observed Mr. Greene actually trying to pull a hose from on of those firefighters. Plaintiff

was visibly upset and quite besides himself. He was continuously complaining to Brian Engle and his firefighters that they had to direct the water and that they had to fight the fire in ways which the firefighters obviously disagreed.

10. There is no question but that plaintiff was interfering with the firefighting efforts. Moreover in addition to repeatedly interrupting the firefighters, plaintiff posed a danger to himself and other firefighters by his actions. If he was injured by the fire or by the downed power lines, he would have to be rescued interfering yet again with the fire fighting efforts and posing a danger to any rescuing firefighters in the process.

11. In view of the information related to me by Brian Engle and my own observations of the plaintiff's behavior, I thereafter approached plaintiff and asked him to stand back away from the fire to stop interrupting the firefighters efforts. I told him to stand behind the firemen at a sufficient distance so that he would not interfere with their efforts. I told him to stop trying to get into his house, to stop trying to convince the firemen how to fight the fire and to stay away from the downed power lines.

12. Plaintiff continued rambling about how he thought the fire could be fought better and about how he had equipment in the basement. Plaintiff did, however, step back behind the fire equipment at a distance where he could still observe the house but not interfere with anyone. On each occasion and within moments of his moving back, however, the plaintiff inched his way back towards the firefighters and repeated his same previous behavior.

13. On three or four of these occasions, I caught up with the plaintiff and repeated the above same instructions. Each time the plaintiff initially stepped back only to return from

behind the equipment to the immediate vicinity of the fire and to repeat the same type of interfering and disruptive behavior noted above.

14. Brian Engle accordingly again asked me to keep plaintiff back. Since my repeated requests that he not interfere with the firefighters had obviously had been to no avail, I asked the plaintiff to come across the street to a restaurant where he could have a cup of coffee and relax. (ft nt 1) I again told him that it was important that he not interrupt the firefighters, that he should just let them do their job and that he had to calm down. Mr. Greene agreed and voluntarily accompanied me to the restaurant.

15. After a few minutes, I left the plaintiff to return to my patrol vehicle which was parked just south of the restaurant on Rte. 9. It was my intent to report to dispatch my status. I never got the chance, however, as at the very moment I got into the car, I received a radio call from Chief Engle reporting that plaintiff was coming down the driveway. Brian Engle again asked the officer to stop the plaintiff.

16. I looked up and observed the plaintiff crossing the road and going down the driveway. I got out of my car and called to plaintiff to stop. Mr. Greene stopped for a moment and looked at me but then continued walking onwards towards

Ft nt 1. I am told that Mr. Greene claims that he does not drink coffee. My suggestion to him that we go up to the restaurant for a cup of coffee was made, however, to get him away from the fire scene, not to indicate that he had to have a cup of coffee or that he cared for coffee. Whether he had coffee, tea, or any other beverage was irrelevant. In fact, I believe one of the reasons he wanted to go was so that he could change his socks which had gotten wet while running around the firemen.

his house away from me. I followed him and repeated my request that he stop. Again, he turned around and looked at me but, this time, he began actually running away from me towards his burning home. I began chasing him down his driveway and had to tackle him to stop his headlong run towards the fire. Plaintiff resisted continued to fight while trying to get towards his house. Firefighters had to help me subdue him.

17. I took plaintiff to the Warrensburg substation of the Warren County Sheriff's Department where he was confined for approximately one hour for booking, processing and issuance of an appearance ticket charging him with the misdemeanor of obstructing firefighting operations in violation of New York Penal Law par 195. 15. (ft nt 2) Plaintiff immediately returned to the fire scene but this time did not repeat his previous behavior. He remained there for the remainder of the time that the fire was being fought.

18. I never observed any property being stolen from the plaintiff's home I certainly had no involvement in any alleged theft. Moreover, plaintiff was only in custody for about one hour during which time the fire continued to blaze. Plaintiff and his wife could have taken any steps they deemed feasible to protect their property during and after the fire. Neither I, the Sheriff nor Warren County owed plaintiff any duty to continuously watch his property during and after the fire to ensure there were no thefts.

Ft nt 2. I understand further that the plaintiff has attempted to make an issue of the fact that I had to look up the actual citation. The Court must understand that I do not carry the complete penal code in my mind and - like most people - look citations up as need be. Hence my having to look up the statute and section number is irrelevant.

19. While ultimately the Town Court adjourned the ticket in contemplation of dismissal, I respectfully submit that any one of the events referred to above constitute more than ample probable cause for the arrest of the plaintiff. His repeated behavior - after repeatedly being asked to stay back by myself, by Chief Engle and upon information and belief, by individual firefighters - clearly evidences his unwillingness to abide by the law and by reason in unfortunate circumstances. (end of affidavit)

Signed by Douglas David and notarized

Attorney's Affidavit of Robert P. McNally, dated 1-14-1998

15. The plaintiff, however, kept repeatedly trying to drag the firefighters away by pulling on them or their hoses. He would tap on their shoulders or grab their arms in an attempt to have them direct their water into the basement through the cellar doors. Mr. Greene kept interrupting them by insisting that they direct water from their hoses into the basement door. (G42, 46-48, 84, 101-102). On one occasion, he actually grabbed one of the hoses from a firefighter. Plaintiff insisted that the fire could be better fought in this fashion and that the firefighters had to do as he requested. (Ft nt 1) Plaintiff repeatedly interfered with the firemen in this fashion. (See also par. 26) On three or four occasions, Brian Engle told Mr. Greene (as did his men on several occasions) to stand back to let them work. On each occasion, he was told that he could stay but he simply had to get farther back behind the men and stop interfering with them. Plaintiff

Ft nt 1 Actually, Brian Engle in his affidavit asserts that he had considered fighting the fire by directing water through the cellar door. However, the roof had collapsed closing off the corridor into the basement with debris. Hence there was no way to put water into the basement area.

would do so only to repeat the same behavior over and over.

16. On one occasion, Brian Engle explained that plaintiff had to be actually physically prevented from entering the basement door where plaintiff was trying and into the house to remove electrical equipment. The firefighters had repeatedly told him that he was not to go back into the house. (G86-90) Plaintiff, however, again believed that he knew better about whether he could reenter the burning house.(G89)

17. Moreover, there were electric wires that had burned through and were lying exposed on the ground all around the basement door and house. Plaintiff was told not to go near the area because if the danger of electrocution, not only by the firefighters but by a representative of the power company, Niagra Mohawk. (G38) Plaintiff believed that as an engineer and a person who worked with electricity he could go near these live wires and that he knew better than the power company representatives. (G38) Therefore he admits that he ignored these warnings. (G38, 94-95) There is no question that plaintiff posed a danger both to himself and other firefighters by his actions. If his belief in his ability to handle electricity proved wrong, he would have to be rescued, thereby interfering yet again with the firefighting efforts and also posing a threat to any firefighters engaged in a rescue. Irrespective of his ability, he should have listened to the instructions that he received and stay back as he was told repeatedly.

18. Because plaintiff would not listen to the firefighters or to Chief Engle, Brian Engle asked Warren County Sheriff Deputy Douglas David to do some thing to keep plaintiff out of the way so that they could fight the fire.

19. Officer David's affidavit is annexed hereto and made a part hereof as Exhibit F. That affidavit establishes that he received a dispatch reporting a mutual aid fire at the home of Robert Greene in Warrensburg, New York. Mutual aid fires are responded to by the fire companies of several municipalities. They are generally large fires requiring the assistance of multiple fire companies to put out. As a matter of custom and practice, a police officer's duties include crowd control and public safety at and about fires and particularly at mutual aid fires which tend to be larger and more serious.

20. Upon arriving at the scene, Officer David observed the general area of the fire. He actually watched the plaintiff tapping on firemen's shoulders as they were directing water onto the fire in an apparent effort to convince them that they should direct their efforts elsewhere. He also observed Mr. Greene running around the building several times in very close to proximity to the fire, near various downed electric wires and between the firefighters and the fire itself. In fact, he actually observed Mr. Greene actually trying to pull a hose from one of these firefighters. Officer David observed that plaintiff was visibly upset and quite besides himself. He was continuously complaining to Brian Engle and the firefighters that they had to direct the water through the cellar doors and they had to fight the fire in ways which the firefighters obviously disagreed. (Plaintiff effectively admits this at par. 26-29 of his complaint.)

21. Brian Engle there after approached Officer David and informed him of Mr. Greene's prior activities in interfering with the firefighters. He informed Officer David that he was frustrated with his efforts to stop plaintiff from going too near the fire; from interfering with his men and was posing danger to himself and his other officers. He asked Officer David to take plaintiff aside and to keep him back so that the

firefighters could do their job.

22. Officer David thereafter approached plaintiff and asked him to stand back away from the fire and to stop interrupting the firefighters efforts. He instructed plaintiff to stand behind the fireman away from them at a sufficient distance so that he would not interfere with their efforts. On each occasion, the plaintiff continued rambling about how he thought the fire could be fought better, about how he had property in the basement; etc. But on each occasion, plaintiff did as the officer instructed stepping back behind the fire equipment at a distance where he could still observe the house but not interfere with anyone. On each occasion, however, the plaintiff within moments inched his way back towards the firefighters and repeated his same previous behavior. (Plaintiff actually admits at G103 to being told to stand back on "three or four " occasions by the officer.)

23. Again, at the repeated requests of Brian Engle, Officer David asked the plaintiff to leave the scene to come across the street to a restaurant/motel where he could have a cup of coffee. He again was told that it was important that he not interrupt the firefighters and that he had to calm down. Mr. Greene agreed and accompanied the officer across the street. Officer David then went to his car to report to the sheriff's department.

24. When he reached his parked vehicle to call in, he instead received a radio communication from Brian Engle reporting that plaintiff was running back down the driveway. Brian Engle again asked the officer to stop the plaintiff.

25. Officer David looked up and observed the plaintiff crossing the road and running down the driveway. The officer got back out of his car. He was in a marked cruiser and in uniform. He observed plaintiff making his way to the

fire and called to plaintiff to stop. The plaintiff did so only long enough to look at the officer and to turn back towards the fire scene. The officer called for him to stop a second time. Once more the plaintiff stopped and turned towards the officer but then to begin running towards the house away from the officer. The officer followed him and tackled the plaintiff. Plaintiff resisted the arrest and continued to fight the officer trying to get towards his house. Several individuals needed to subdue him. He was placed in handcuffs

26. Plaintiff was taken to the Warrensburg substation of the Warren County Sheriff's Department where he was confined for approximately one hour for booking processing and issuance of an appearance ticket charging him with the offence of obstructing firefighter operations.

27. Ultimately, the Court adjourned the ticket in contemplation of dismissal. (G133) Plaintiff agreed to that disposition knowing that he could have had a jury trial if he wished. (G136-137) He was represented by an attorney, Paul Burke, during this prosecution. (G109). He understood that an ACOD was not an adjudication of innocence.(G110-111)

28. During the time that plaintiff was being arrested, his home was still being observed by his wife who was in the immediate vicinity. There is no proof whatsoever that any property was stolen on the premises while plaintiff was under arrest. Plaintiff was also not informed that he had to stay away from the scene. He was simply told that he could not interfere with the firefighting efforts.

29. Plaintiff claims that the items set forth in this bill of particulars annexed hereto and made a part hereof as exhibit "F" were stolen from his home. (G115-116) These items and their claimed value are:

electronic hand saw	$20.00
electric drill	20.00
socket wrench holders	12.00
electronic frequency counter	150.00
18 inch pipe wrench	25.00
small hand tools	No stated value

The plaintiff, however, has no evidence whatsoever to suggest that the property was taken during his arrest or during two subsequent flare ups. Plaintiff has "no idea when [the items he claims were stolen] were taken" or who took this property.(G116) More importantly, the plaintiff is not even certain that the property is missing as he has to this day still not searched through a pile of debris 25-30 feet long and 4-5 feet high to see whether any of these items are located therein.(G116-117, 123-124)

30. For the reasons set forth in the accompanying memorandum of law and pursuant to this court's decision, I respectfully submit that there was probable cause for the arrest of plaintiff. Plaintiff acted in a fashion which clearly interfered with the firefighting efforts in violation of New York Penal Law par. 195.15. In view of the above and in view of plaintiff's admissions at paragraphs "10" through "16", "20" through "23" and "26" through "29" of his complaint, it is respectfully submitted that there can be no question of fact but that he intentionally tried to obstruct the firefighting efforts. (end of affidavit)

Signed Robert P. McNally

Notarized

Affidavit of Jean Hadden, Feb. 2 1998.

JEAN HADDEN, being duly sworn, deposes and says:

1. This is to state that I, JEAN HADDEN, and my husband, MERVIN R. HADDEN (now deceased) happened to be in our door yard at 281 Main Street, Warrensburg on January 8, 1994 at about 2:30 in the afternoon when we observed thick black smoke rising toward the sky, coming from the home of our next door (north west) neighbors, ROBERT and ROBIN GREENE.

2. We arrived at the fire about the same time as the Warrensburg Fire Department. Throughout the major part of the fire we stood on the west bank of Route 9 looking directly down the hill at the fire scene. We had the opportunity of clearly viewing Mr. and Mrs. Greene and later just Mr. Greene who much of the time stood in the door yard below away from the firemen.

3. I observed ROBERT GREENE as he moved his jeep vehicle out of the way of fire trucks.

4. I read Officer DOUGLAS DAVID'S and Fire Chief BRIAN ENGLE'S affidavits describing their versions of what happened at the time of the fire. Contrary to their recollections, I wish to state unequivocally that never at any time did I observe ROBERT GREENE running, being excessively close to the burning house or having any confrontations with firemen or the uniformed deputy sheriff. He was mostly off to one side by himself.

5. I observed a member of the fire department with a video camera. This person, CINDY ANDERSON, had told me on a previous occasion that as a rule she taped fires and accidents for the fire department and I surmised that this was the job she was performing that day.

6. I was surprised to see ROBERT GREENE leaving the scene of the fire by way of his driveway after briefly and orderly talking to a group of firemen and than the deputy sheriff.

I had not seen him conversing with others before this brief exchange.

7. I read DOUGLAS DAVID'S affidavit stating that he observed ROBERT GREENE (I quote) "actually trying to pull a hose away from one of these firefighters." I never, in any manner, saw anything like this happen. All the time I was there, watching intently, he never acted in any other way than calm and rational, although he was obviously concerned.

8. I have lived at 281 Main Street (renamed 4060 Main Street) Warrensburg, for nearly 39 years and have known most all of that time. I know him to be a highly intelligent and practical man with integrity and high standards. He is well known in Warren County for his honesty.

Signed JEAN HADDEN and notarized.

Affidavit of ANTHONY SAPIENZA, Jan. 26, 1998

ANTHONY SAPIENZA, being duly sworn, deposes and says:

1. I have known my neighbor Robert Greene for a period of fifteen years.

2. I saw that the house of Robert Greene was on fire and I was with him and his wife at various times for moral support.

3. I supplied Mr. Greene with a dry pair of socks when he changed his boots at my lodge.

4. Mr. Greene and I walked down his driveway, not talking to anyone else.

5. We stopped for a moment, part of the way down, not near any fire equipment, perhaps fifty feet from a pumper.

6. At that time, Mr. Greene was wrestled to the ground, handcuffed and taken away.

Signed ANTHONY SAPIENZA and notarized.

1. This affidavit is to clarify the described events in the witness affidavit of Jan. 26, 1998 by Anthony Sapienza.
2. I have known me neighbor Robert Greene for a period of seventeen years.
3. During the time that the house of Robert Greene was on fire I was with him and his wife at various times for moral support.
4. After supplying Mr. Greene with a dry pair of socks when he changed his boots at my lodge, Mr. Greene and I walked down his driveway.
5. We walked down of our own free will, not being accosted, warned or stopped by anyone. There were no barricades, police or firefighter tapes restricting access to the scene. We were obviously concerned about the house fire as any concerned would in a similar situation.
6. After briefly stopping, Mr. Greene was suddenly and without warning, wrestled to the ground by a police officer along with other authorities, handcuffed and taken away. This occurred about 150 feet from Mr. Greene's house and approximately 50 ft. from any fire truck.
7. Although it has been years since this occurrence, I remember it vividly as it was one of the most shocking events I have ever experienced. The unnecessary violence and abduction was reminiscent of the terrible events in our country when citizens of color were denied their civil rights and treated like animals.
8. As a key witness who was with Mr. Greene at the occurrence I here by state that the events listed in Douglas David's AFFIDAVIT OF MERIT dated January 14th, 1998, paragraph sixteen were erroneous. Other than the statement that Mr. Greene crossed the road into his driveway and that Deputy David had help in restraining Mr. Greene, the rest of the sixteen did not occur and is false information.
9. On a similar basis, paragraph twenty-five of the affidavit of attorney Robert P. McNally also dated January 14th 1998, contained several comparable erroneous claims such as; Mr.

Greene was running down his driveway, ignored the calls of Deputy David and that Mr. Greene tried to fight off the officer and continue trying to get to his house. These events never happened.

10. The fact that both of the above statements from the affidavits of Deputy David and Robert P. McNally did not include the actuality that I was walking along side Mr. Greene during the times mentioned is a curious exclusion to me as I should have been identified as myself or an unidentified person. If I were mentioned in either affidavit, this would certify that there was indeed a witness and would have proved harmful to the testimonies. This vitality should help substantiate that both statements, (paragraph sixteen from Deputy David and paragraph from Robert P. McNally), were fabricated.

11. To recap the situation, while Mr. Greene and I were walking down his driveway at a normal pace, no one yelled at us to stop, nobody confronted us causing us to stop and likewise there was no one to "run around".

12. I am willing to testify in court to the above information.

Dated: March 11, 1999. Signed by Anthony Sapienza
Notarized.

Affidavit of Jean Hadden dated March 11, 1999.
JEAN HADDEN, being duly sworn, deposes and says:

1. I have known Robert Greene for a period of thirty-six years.

2. This affidavit is to clarify the described events in the witness affidavit of February 2nd,1998 by Jean Hadden.

3. While conversing outside on January 8, 1994, with my husband, Mervin Hadden (now deceased), we noticed smoke coming from the area of our neighbor Mr. Greene's home and in our concern arrived there just before the first fire truck. Throughout the major part of the fire we stood on the west

bank of route 9 looking directly down the hill at the fire scene.

4. In my profession-I write about my observations and memories and I duly remembered the following events which differ on many points from the testimonies of the defendants.

5. I have reviewed the opposing testimonies and dispute the following incidents and list the facts which I have witnessed.

6. Never at any time did I see Mr. Greene excessively close to the burning building nor running around the house as stated in Douglas David's affidavit paragraph 9. To my knowledge this is false.

7. In addition, the statement in Douglas David's affidavit, paragraph 9, that Mr. Greene was "actually trying to pull a hose from one of these firefighters", is not true according to my observations.

8. I did not witness anything close to the matter and the entire time I was present Mr. Greene appeared to be calm, albeit obviously upset that his home was on fire.

9. In Brian Engle's affidavit, paragraph 8, the similar claim "the plaintiff, however repeatedly tried to drag the fire fighters away by pulling on them or their hoses" has no bearing in fact.

10. This information in the above paragraph also places the affidavit of Robert McNally, paragraph 15, as false according to what I saw.

11. Contrary to the opposing affidavits, I did not see at any time Mr. Greene molesting any equipment, harassing any fire fighters or diverting the attention of any officials on duty. He was off to one side by himself observing the fire, speaking seldom to anyone, before leaving the fire scene.

Signed by Jean Hadden, March 11, 1999 Notarized

Affidavit of Petitioner, Feb. 4, 1999

Robert Greene, being duly sworn, deposes and says that:

1. I am the plaintiff in the above matter.
2. The Court has information that many events alleged by the defendants are fabricated and never happened.
3. The plaintiff has presented sworn affidavits from two independent competent witnesses.
4. The plaintiff will proceed towards presenting this information to the Court in a deposition. (note did not do)
5. As stated in the decision of 1-21-99 middle of page nine (now App-13) "A person is guilty of obstructing firefighting operations when he (they) intentionally and unreasonably obstructs the efforts of any…fireman in extinguishing a fire ..
6. Page 3 par 2 "While firefighting efforts were going on, plaintiff entered the cellar door to retrieve electrical equipment.
7. Big correction to the Court, at that time there were two men walking near the cellar door. They were not in any uniform nor did they in anyway identify themselves. These men were not engaged in anything towards extinguishing the fire.
8. The cellar door - two doors four feet wide - can, when open and clear, pass a vehicle into the house as a garage.
9. The equipment was within a few feet of this door and their retrieval took twenty seconds or less. This did not interfere or obstruct the walking of these two men who were not engaged in any activity that could extinguish the fire.
10. At that time there was no smoke or heat in the cellar and only a small amount of fire at the mid house stairway.
11. Had these men followed the (voluntary) firefighting code "Essentials of Firefighting" then the portion of the corrected/clarified affidavit of Timothy N. Taylor should have occurred namely "salvage tactics" paragraph's "B and C" Try to get owner or occupant information on items of value that may be salvaged from the uninvolved areas of the building [i.e. rooms or sections that the fire has not yet

burned]. ...Salvage as much as possible, by removing from the building using air packs until high heat or structural collapse is eminent or covering items with salvage covers [tarps] if that area is deemed to be savable.
12. This could have resulted in considerable property salvaged with the help from all able persons that were present.
13. When other fire fighting equipment was to arrive then the use of air packs would follow the code in "Essentials of Firefighting" and is done in New Hampshire.
14. It can be many minutes until high heat of structural collapse stops this type of salvage procedure.
15. In addition at this fire there were no posted barrier tapes to designate the limit of observers other than fire fighters or those with permission.
16. At the time of three to five minutes into the fire there is no danger of structural collapse.
17. The same page three, paragraph two states where plaintiff ignored a power company man, as I was staying away from the low wires. See deposition page 38 line nine "but I did not", line eight "touch them". Read the total of pages 38 to 41. Plaintiff, with out a need, would not touch these wires.
18. To handle these wires, presumed to still have electricity, would not be any more dangerous than handling the cord of a vacuum cleaner in use or any other electrical appliance.
19. Plaintiff's actions of walking three or four feet away from electrical wires does not interfere or obstruct the fire fighting operation.
20. To exaggerate this event into a threat to electrocute firemen shows a lack of electrical experience by those making the claim.
21. Plaintiff, when in high school in the middle of the summer of 1950 or 1951, at my parents cabin (twenty four units) and trailer park (twenty to twenty five privately owned units) at Lake George, NY, changed a portion of the main

Electrical wires while energized and in use. It was done in this manner to not inconvenience patrons and was needed due to low voltage causing the troubles. The portion changed was about five hundred feet long. It was a two wire system that was supported on trees and had perhaps a dozen taps to cabins or trailers. As again stated, this was totally accomplished alone with the electricity in these wires and in use. Through the ensuing years there have been dozens and dozens of other work upon wires for electricity when not turned off.

22. Plaintiff holds a Bachelor of Electrical Engineering degree from Union College and a Professional Engineer's license from the State of New York.

23. Plaintiff has also since the late 40's repaired black and white television sets. Since the mid 50's repaired or worked with color television sets, which can have 30,000 volts in their wiring. This high voltage will jump one to one and one half inches in the air, such that a person need not touch a part. In the case of house wires, contact must be made with bare metal parts of the wire to cause the electricity to pass to a persons body.

24. Therefore plaintiff has ample experience with the handling of energized electrical wiring and equipment to do it safely.

25. In the decision -end of page three to four, (App-9 mid page) the straightening of a kink in a hose is aiding the firefighting operation. Most people in a similar situation would do the same.

26. Asking the firefighters to direct water in a different direction is not interfering or obstructing the firefighting operation.

27. The water was being directed to the top of a collapsed floor (acting like a roof) with the fire underneath. Perhaps the competence level of the firemen needs to be improved to the extent that they are aware of the water, to do good, must reach the burn and not to be just put near it.

28. The plaintiff witnessed a fire in Warrensburg a couple of years later where all of the water, eight or more hoses, was going on the roof of the building. A slight change with the in use Ariel ladder lowered, then some of the water could be put into a large attic window where the burn was taking place. The lower part of the building did not have sizeable smoke coming out of the broken windows.

29. The plaintiff in asking the firemen to redirect water in a way that could more efficiently extinguish the fire, is a reasonable request. My knowing the structure of the house, a cement wall of the cellar was being hit by the water.

30. The burn of the house and its collapse would destroy any electrical circuit such that the downed wires near the cellar door would have no electricity within them.

31. The other condition of walking around the house (at thirty to fifty feet) in itself would have no effect upon firefighting efforts.

32. The question being presented, that with out the fabricated events, what probable cause is there to order a property owner to leave their property.

33. In addition the plaintiff standing in their driveway at approximately one hundred fifty feet from their house is not a probable cause for an arrest.

34. The plaintiff had been granted a "secret" classification to handle military information. (RCA Camden NJ 1958.) This was after a rigorous evaluation of a person, perhaps by the FBI, to obtain this clearance. It was issued by a Philadelphia office in 1958 where I am not sure of the code for that office.

35. For the plaintiff to have done these alleged acts, then act like they never happened and obtain two independent witnesses to lie is ridiculous.

36. For the defendants, their actions seem to be common.

37. As for the ACOD - that was to be automatic unless some criminal act occurred in six months by the plaintiff. None occurred.

38. Afire in New York or in New Hampshire can result in large property damage but the results to the property owner can be decidedly different. Common sense will show which would be the desired end result. Which would you want if a fire was to happen at your home, remember it can happen.

Signed Robert Greene Notarized.

Informational affidavit April 1, 1998

Timothy N. Taylor, being duly sworn, deposes and says:

1. I have known Robert Greene for several years. I am presently Assistant Chief of Enfield Volunteer Fire Department, in the Town of Enfield ,County of Grafton, State of New Hampshire.

2. Robert Greene asked that I list procedures that the Enfield Fire Department uses for fire scene control and salvage tactics.

3. Scene control:

A. Remove all occupants from the burning building.

B. Determine where it is safe and not safe[the hot zone].

C. Post barrier tape ["Fire Line Do Not Cross] around the hot zone. This is usually 35 to50 feet away from the burning structure unless there is a fatality.

D. Inform violators that they will be arrested if they cross the line without permission of a fire officer, or a designated scene Officer.

E. Inform the news media where and when a news release will be available.

4. Salvage Tactics:

A. Try to establish a hose stream between the fire and the unburned area. The contents of a building are often of more value that the building.

B. Try to get owner or occupant information on items of value that may be salvaged from the uninvolved areas of the building[ie.rooms or sections that the fire has not yet burned].

C. Salvage as much as possible, by removing from the building using air packs until high heat or structural collapse is eminent or covering items with salvage covers [tarps] if that area is deemed to be saveable .

D. Use occupant information, as much as possible, to determine building features and fire load, that could enhance fire fighting success and fire fighter safety.

E. Only allow occupant in the building, in uninvolved areas of the building [smoke and heat free] and always with a fire fighter that can control the occupant. This practice is only allowed if it is deemed to be completely safe for the occupant and necessary to indentify to be salvaged by the fire department.

5. In my 20 years of being a member of the Enfield Fire Department, I have found that when a family has lost it's home, a few items saved can turn bitterness into pride of it's fire department.

Signed Timothy N. Taylor Notarized.

Affidavit of Plaintiff March 11, 1999

Robert Greene, being duly sworn, deposes and says that:

1. I am the plaintiff in the above matter.
2. No opposition has been received to the motion for reconsideration dated Feb. 5, 1999.
3. This affidavit is to clarify and elaborate the already existing positions that have been taken.
4. Two affidavits from witnesses Anthony Sapienza and Jean Hadden are supplied to clarify their statements.
5. These witness affidavits clearly state that numerous affidavit statements by the defendants are not accurate information. These will be itemized.
6. The affidavit of Anthony Sapienza paragraph 8 states that Douglas David's affidavit of Jan. 14, 1998 paragraph 16 has false information on his requesting plaintiff to stop, plaintiff looking at him and running towards his house.
7. The affidavit of Anthony Sapienza paragraph 9 states that

Robert McNally's affidavit of Jan. 14, 1998 paragraph 25 has false information as it states that Douglas David called twice for the plaintiff to stop and then continued running towards his house even after being tackled trying to get towards the house.

8. The affidavit of Jean Hadden paragraph 6 states that Douglas David's affidavit paragraph 9, to my knowledge this is false, being excessively close to the burning building or running around the house.

9. The affidavit of Jean Hadden paragraph 7 states that the affidavit of Douglas David paragraph 9 is not true by her observations as to trying to pull a hose from one of these fire fighters.

10. The affidavit of Jean Hadden paragraph 9 states that the affidavit of Brian Engle paragraph 8 has no bearing in fact as to pulling on firefighters or their hoses.

11. The affidavit of Jean Hadden paragraph 10 states that the affidavit of Robert McNally paragraph 15 is, as false according to what I saw, repeatedly trying to drag the fire fighters away by pulling on them or their hoses.

12. The affidavit of Jean Hadden paragraph 11 has a broad statement that will fit numerous parts of the affidavits of the defendants. Some are: Brian Engle paragraph 8 plaintiff's repeatedly bothering the firemen .... Douglas David's affidavit paragraph 7 Mr. Greene kept interrupting the firefighters by .... and others.

13. This is conclusive evidence that numerous disputes of material importance do occur within the evidence supplied to the court. There are more that have not been detailed or maybe relatively insignificant.

14. It has been observed that all three of these of the defense affidavits omitted the information that the plaintiff was ORDERED to leave his property. That information was included in the fact finding of the decision dated Jan. 22, 1999, in the middle of the page 5.

15. As to the video tape, to clarify its significance, if the plaintiff had done all of the wrongful acts he is accused of in the defendant's affidavits, it would be reasonable to expect that the person who video taped the fire scene would have caught some, if not all, of these wrongful acts.

16. The plaintiff reluctantly named a witness, Dale Rapp, at the deposition pg. 99 dated Oct. 27, 1997. Dale Rapp, several months later refused to sign a rather brief affidavit which only stated the words of the conversation between the plaintiff and Douglas David.

17. In a very recent conversation with Edward Lockheart, a member of the Warrensburg Fire Co. he related to me that he had been asked to make statements about me that he knew I had not done.

18. Therefore the plaintiff demands the reversal of the decision of Jan. 22, 1999, on the basis of the many statements of false information being presented by the defendants to the Court thereby obtaining a ruling in their favor.

Signed Robert Greene Notarized.

New App-54

New York Penal Law par. 195.15

A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any

1. fireman in extinguishing a fire, or prvents or dissuades another from extinguishing or helping a fire; or

2 fireman, police officer or peace officer in performing his duties in circumstances involving an imminent danger created by an explosion, threat of explosion or the presence of toxic fumes or gasses.

Federal Rules of Civil Procedure 56 (C)

Summary judgement:

Shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law.